

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NANCY L HINRICHS
Claimant

APPEAL NO: 10A-UI-03526-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 01/31/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's February 25, 2010 decision (reference 01) that concluded she was not qualified to receive benefits and the employer's account was exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on April 8, 2010. The claimant participated in the hearing. Prior to April 8, the employer informed the Appeals Section that the employer was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 1994. The claimant worked as a full-time care plan coordinator.

On January 21, 2010, an aide called the claimant to help her in a resident's room. When the claimant arrived at the resident's room, the resident initially appeared to be sleeping. The claimant soon determined the resident was not breathing. The claimant, with assistance of aides, transferred the resident to the bed. A nurse checked the resident's blood pressure and pulse. The claimant and other personnel started post mortem care. A nurse came in the resident's room and reported the resident was a full code. A full code means a person wants CPR administered. When the claimant learned the patient was a full code ten or more minutes had passed. The claimant and C.W. believed it was too late to start CPR. CPR should be started within four minutes from the time a person stops breathing. An employee contacted the resident's doctor who confirmed that CPR should not be started.

The employer discharged the claimant on January 27, 2010 because she had not followed the employer's protocol – providing CPR to a full code resident. After the claimant had been discharged, the employer implemented a new practice that clearly identified residents who were full code residents.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

On January 21, 2010, neither the claimant nor anyone in the resident's room knew the resident was a full code resident. The full code designation was not clearly identified. By the time someone was able to find this information, it was too late to start CRP. The facts show the claimant did not intentionally fail to follow protocol on January 21, 2010. She just did not know this resident was a full code resident. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of January 31, 2010, she is qualified to receive benefits.

DECISION:

The representative's February 25, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 31, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employers' account may be charged for benefits paid to claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css